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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/715,633
Filing Date: November 18, 2003
Appellant(s): DORFSTATTER, WALTER A.

Julia Church Dierker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/20/2010 appealing from the Office action mailed 08/20/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-7 are the claims on appeal.

Claims 1-7 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

In the present case Official Notice was used to cover subject matter in claim 2, and in the reply filed by Applicant on 03/10/2008 and in the Appeal Brief filed 09/26/2008, no attempt was made by Applicant to traverse the official notice rejections; therefore, the material of claim 2 covered by the official notice in the office action dated 12/10/2007 is understood to be Applicant Admitted Prior Art.

Specifically, the limitation stated, the claimed: *receiving a claim damage estimate*; and the Examiner took official notice that an insurance carrier receiving a claim damage estimate for analysis is old and well known in the insurance industry. For example, when an insured customer is involved in an automobile accident, he or she may submit an estimate for repairs from the body or repair shop to the insurance carrier and thereby file a claim. Therefore, it would have been obvious at the time the invention was made to include claim damage estimate submission requirements to facilitate claims processing.

6,141,611	Mackey	12-1998
6,694,234	Lockwood	10-2001
2005/0108063	Madill	11-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1-4** are rejected under 35 U.S.C. 101 based on Supreme Court precedent and recent Federal Circuit decisions. The Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular **machine**) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilsky, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); and Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied. This can be done, for example, by identifying the apparatus that accomplishes the method steps, by positively reciting the subject matter that is being transformed, or by identifying the material that is being changed to a different state.

Applicant's method steps in claims 1-4 fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be preformed

without the use of a particular apparatus. Furthermore, the method steps fail to transform underlying subject matter to a different state or thing. For example, claim 1 teaches sensing a vehicle incident, sending data to a service center, using the data to estimate vehicle damage, and using the estimate in an insurance process; but in no way is it clear as to how this is accomplished (such as, accomplished by a particular **machine**). It is recommended that Applicant simply add any structural language from the specification as necessary to complete a statutorily compliant method having Applicant's desired capabilities.

Note: Claim number 1 includes machine parts (transceiver); however, these parts are directed towards nominal data gathering. As Comiskey recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." Comiskey, 499 F.3d at 1380 (citing In re Grams, 888 F.2d 835, 839-40 (Fed. Cir. 1989)). See: Ex parte Lars Langemry, Magnus Markland, Arne Nordmark, Per-Olof Persson, and Magnus Ringh, Appeal No. 2008-1495, Application No. 09/675,778.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 1, 2, and 5** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The Court of Appeals for the Federal Circuit has set forth a number of factors (the "*Wands* factors") to consider with regard to a lack of enablement, including:

A. The breadth of the claims;
B. The nature of the invention;
C. The state of the prior art;
D. The level of one of ordinary skill;
E. The level of predictability in the art;
F. The amount of direction provided by the inventor;
G. The existence of working examples; and
H. The quantity of experimentation needed to make or use the invention based on the content of the disclosure.

In re Wands, 858 F.2d 731, 737 (Fed. Cir. 1988). See MPEP § 2164.01(a)

5. As per claim 2, it is drawn to determining vehicle damage from delta velocity and vehicle information.

Factor A: The claim is overly broad, disclosing only that delta velocity is used in estimating vehicle damage.

Factor B: The invention is drawn to estimating vehicle damage by using vehicle delta velocity which is technically complex.

Factor C: The prior art cited PTO-892 show great detail demonstrating the level of ordinary skill in the art at the time the invention was made, and reveal that estimating vehicle damage from vehicle delta velocity and vehicle identification information was not well known.

Factor D: One of ordinary skill in the art must be mathematically skilled, and one of ordinary skill in the art would still not know how to estimate vehicle damage from

vehicle delta velocity and vehicle identification information.

Factor E: The invention attempts to automate a manual process. Estimating vehicle damage is a subjective manual process typically done by adjustors in the insurance business or specialists in the automotive business. The prior results were unpredictable as they require imprecise human judgments.

Factor F: The inventor provides no direction. The specification refers to an “estimator” for receiving incident delta velocity and "utilizes this data along with the vehicle type information to determine an estimated damage value" by looking up the inputs in a database, but in no way is it made clear how this is done; what calculations, variables, inputs, and equations are involved; or even exactly what the variables are, except for that of delta velocity. A mere statement that it is done is insufficient to show possession.

Factor G: No working examples were provided.

Factor H: Based on the content of the disclosure, an undue amount of experimentation would be required to, in any way, estimate vehicle damage; therefore, an undue amount of experimentation would be needed to make or use the Applicant's invention.

6. As per claims 1 and 5, they are rejected similarly to claim 2, as they rely on vehicle sensors to estimate vehicle damage and are less specific.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claims 1, 2, and 5** are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See: MPEP § 2172.01. The omitted steps are: Applicant claims using incident data to automatically estimate vehicle damage (in claim 2, incident data is delta velocity), but the steps detailing how one uses said incident data to determine vehicle damage are missing. Applicant's specification teaches only that an "estimator" makes estimate by looking up the input in a database, but no such database is known to exist, and the steps involved in looking up, calculating, and determining an estimated values based on incident data are missing.

Applicant Admitted Prior Art

9. **Note:** The MPEP states: "If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate." In the present case Official Notice was used to cover subject matter in claim 2, and in the reply filed by Applicant on 03/10/2008 and in the Appeal Brief filed 09/26/2008, no attempt was made by Applicant to traverse the official notice rejections; therefore, the material of claim 2 covered by the official notice in the office action dated 12/10/2007 is understood to be Applicant Admitted Prior Art.

10. Specifically, the limitation stated: *receiving a claim damage estimate;* and the Examiner took official notice "that an insurance carrier receiving a claim damage

estimate for analysis is old and well known in the insurance industry. For example, when an insured customer is involved in an automobile accident, he or she may submit an estimate for repairs from the body or repair shop to the insurance carrier and thereby file a claim. Therefore, it would have been obvious at the time the invention was made to include claim damage estimate submission requirements to facilitate claims processing."

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. **Claim 1** is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,141,611 to Mackey in view of U.S. Patent 6,694,234 to Lockwood.

13. As per claim 1, Mackey teaches a method for estimating vehicle damage, comprising the steps of:

--sensing a vehicle incident via an on-board module (Fig. 2, ele. 24)(see: Mackey, column 2, lines 46-47; and column 3, lines 10-21, is met by accident detector);

--automatically sending vehicle incident data, via a transceiver operatively associated with the on-board module, to a service center (Fig. 1, ele. 16, 18, 19, 20, 25, and 27)(see: Mackey, column 2, lines 30-40; and column 3, lines 27-34, is met by transmission);

Mackey does not necessarily teach:

--via an estimator at the service center, using the incident data to automatically estimate [[a]] the vehicle damage;

--utilizing the estimated vehicle damage in a vehicle insurance decision process by an insurance service management system.

Though Mackey teaches using vehicle incident data in an insurance related decision (Fig. 1, ele. 25)(see: Mackey, abstract; and column 1, lines 45-49, is met by data utilized by insurance adjuster immediately), Mackey does not necessarily teach estimating vehicle damage. However, Lockwood teaches estimating vehicle damage (see: Lockwood, column 8, line 64 through column 9, line 14, is met by total or right front quarter panel damage) as part of a response plan implemented at a control center that reacts to distress event detection from vehicle sensors (see: Lockwood, column 3, lines 18-39; and column 3, line 50 through column 4, line 61) that impacts insurance coverage (see: Lockwood, column 1 line 58 through column 2, line 13), the insurance provider host is connected to an operation control center via a communication channel such as the Internet (see: Lockwood, column 5, lines 20-35; and column 5, line 63 through column 6, line 40).

Additionally, Lockwood teaches impact and acceleration/deceleration sensors in a vehicle (see: Lockwood, column 4, line 18 and lines 57-58), a server for responding to sensed data (see: Lockwood, column 6, lines 15-29), and estimating damage (see: Lockwood, column 8, line 64 through column 9, line 14, is met by total or right front quarter panel damage) for use in an insurance related decision (see: Lockwood, column 8, lines 33-35; and column 8, line 65 though column 9 line 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Mackey and Lockwood. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

14. **Claims 2-4** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. U.S. Patent 6,141,611 to Mackey in view of U.S. Patent 6,694,234 to Lockwood in view of U.S. Patent Application Publication 2005/0108063 to Madill further in view of Applicant Admitted Prior Art.

15. As per claim 2, Mackey teaches a method for estimating vehicle damage, comprising the steps of:

--*sensing a vehicle incident via a module on-board a vehicle* (Fig. 2, ele. 24)(see: Mackey, column 2, lines 46-47; and column 3, lines 10-21, is met by accident detector);

--*obtaining, via the on-board module, an incident delta velocity of the vehicle from the vehicle incident* (Fig. 2, ele. 24)(see: Mackey, column 2, lines 46-47; and column 3, lines 10-21, is met by accident detector including an accelerometer);

--*sending the incident delta velocity from the on-board module to a service center* (Fig. 1, ele. 16, 18, 19, 20, 25, and 27)(see: Mackey, column 2, lines 14-40; and column 3, lines 27-34, is met by transmission of stored vehicle accident data);

Mackey fails to specifically teach:

--via the estimator at the service center, using the incident delta velocity with vehicle identification information to automatically estimate a vehicle damage value;

Though Mackey teaches using vehicle incident data in an insurance related decision (Fig. 1, ele. 25)(see: Mackey, abstract; and column 1, lines 45-49, is met by data utilized by insurance adjuster immediately), Mackey does not necessarily teach estimating vehicle damage. However, Lockwood teaches estimating vehicle damage (see: Lockwood, column 8, line 64 through column 9, line 14, is met by total or right front quarter panel damage) as part of a response plan implemented at a control center that reacts to distress event detection from vehicle sensors (see: Lockwood, column 3, lines 18-39; and column 3, line 50 through column 4, line 61) that impacts insurance coverage (see: Lockwood, column 1 line 58 through column 2, line 13), the insurance provider host is connected to an operation control center via a communication channel such as the Internet (see: Lockwood, column 5, lines 20-35; and column 5, line 63 through column 6, line 40).

The limitation of *receiving, at an insurance service management system, a claim damage estimate from the service center;* is met by Applicant Admitted Prior Art.

Mackey also fails to teach:

--comparing, via a processor associated with the insurance service management system, the automatically estimated vehicle damage value to the claim damage estimate; and

--in response to the comparison, making an insurance claim-processing related decision.

However, Madill teaches a comparison of at least one data request element disclosed in a claim to additional insurance data (see: Madill, abstract). In addition, based on an assessment such as the one just mentioned, Madill teaches methodology for making investigatory insurance claim-processing related decisions (Fig. 3)(see: Madill, paragraphs 64-65).

Additionally, Lockwood teaches impact and acceleration/deceleration sensors in a vehicle (see: Lockwood, column 4, line 18 and lines 57-58), a server for responding to sensed data (see: Lockwood, column 6, lines 15-29), and estimating damage (see: Lockwood, column 8, line 64 through column 9, line 14, is met by total or right front quarter panel damage) for use in an insurance related decision (see: Lockwood, column 8, lines 33-35; and column 8, line 65 though column 9 line 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Mackey, Lockwood, Madill, and Applicant Admitted Prior Art. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

16. As per claim 3, Madill teaches the claimed step of *making an insurance claim-processing related decision includes requiring an insurance inspection if the automatically estimated vehicle damage value differs by more than a predetermined amount from the claim damage estimate* (307 and 309, Fig. 3)(see: Madill, paragraph

64, is met by the determination to take further investigative action based on a claim if certain indicators surpass a certain threshold).

17. As per claim 4, Madill teaches the claimed step of *making an insurance claim-processing related decision includes omitting an insurance inspection if the automatically estimated vehicle damage value is consistent with the claim damage estimate* as (307 and 311, Fig. 3)(see: Madill, paragraph 65, is met by the determination to not take further investigative action if certain indicators do not meet a certain threshold).

18. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. U.S. Patent 6,141,611 to Mackey in view of U.S. Patent 6,694,234 to Lockwood.

19. As per claim 5, Mackey teaches a system for estimating vehicle damage, comprising:

--a module sensing an occurrence of a vehicle incident and developing incident data responsive thereto (Fig. 2, ele. 24)(see: Mackey, column 2, lines 46-47; and column 3, lines 10-21, is met by accident detector);

--an in-vehicle transceiver for automatically sending vehicle incident data to a service center (Fig. 1, ele. 16, 18, 19, 20, 25, and 27)(see: Mackey, column 2, lines 30-40; and column 3, lines 27-34, is met by transmission);

Mackey fails to specifically teach:

--an estimator within the service center using the incident data to automatically estimate a vehicle damage value; and

--a decision processor providing a business recommendation responsive to the estimated vehicle damage value.

Though Mackey teaches using vehicle incident data in an insurance related decision (Fig. 1, ele. 25)(see: Mackey, abstract; and column 1, lines 45-49, is met by data utilized by insurance adjuster immediately), Mackey does not necessarily teach estimating vehicle damage. However, Lockwood teaches estimating vehicle damage (see: Lockwood, column 8, line 64 through column 9, line 14, is met by total or right front quarter panel damage) as part of a response plan implemented at a control center that reacts to distress event detection from vehicle sensors (see: Lockwood, column 3, lines 18-39; and column 3, line 50 through column 4, line 61) that impacts insurance coverage (see: Lockwood, column 1 line 58 through column 2, line 13), the insurance provider host is connected to an operation control center via a communication channel such as the Internet (see: Lockwood, column 5, lines 20-35; and column 5, line 63 through column 6, line 40).

Additionally, Lockwood teaches impact and acceleration/deceleration sensors in a vehicle (see: Lockwood, column 4, line 18 and lines 57-58), a server for responding to sensed data (see: Lockwood, column 6, lines 15-29), and estimating damage (see: Lockwood, column 8, line 64 through column 9, line 14, is met by total or right front quarter panel damage) for use in an insurance related decision (see: Lockwood, column 8, lines 33-35; and column 8, line 65 though column 9 line 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Mackey and Lockwood. The well

known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

20. **Claims 6 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. U.S. Patent 6,141,611 to Mackey in view of U.S. Patent 6,694,234 to Lockwood further in view of U.S. Patent Application Publication 2005/0108063 to Madill.

21. As per claim 6, Mackey teaches the invention substantially as claimed, see discussion of claim 5, but fails to specifically teach:

--wherein the decision processor provides a recommendation to require further verification of a vehicle insurance claim if the vehicle insurance claim is not consistent with the estimated vehicle damage report.

However, Madill teaches a comparison of at least one data request element disclosed in a claim to additional insurance data (see: Madill, abstract). In addition, based on such an assessment, Madill teaches methodology for making investigatory insurance claim-processing related decisions, including the determination to not take further investigative action if certain indicators do not meet a certain threshold (Fig. 3)(see: Madill, paragraph 64 and 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Mackey, Lockwood, and Madill. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did

separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

22. As per claim 7, Mackey teaches the invention substantially as claimed, see discussion of claim 5, but fails to specifically teach:

--wherein the decision processor provides a recommendation to process a vehicle insurance claim without an insurance inspection if the vehicle insurance claim is consistent with the estimated vehicle damage report.

However, Madill teaches a comparison of at least one data request element disclosed in a claim to additional insurance data (see: Madill, abstract). In addition, based on such an assessment, Madill teaches methodology for making investigatory insurance claim-processing related decisions, including the determination to take further investigative action based on a claim if certain indicators surpass a certain threshold (Fig. 3)(see: Madill, paragraph 64 and 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Mackey, Lockwood, and Madill. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

(10) Response to Argument

23. Appellant's arguments from the response filed on 01/20/2010 have been fully considered and will be addressed below in the order in which they appeared.

24. In the remarks, Appellant argues in substance that (1)

- The Examiner asserts that the term "module," as recited in claims 1 and 2, refers to software directed toward recording sensor data, and that software is not considered to be a particular machine. Appellant respectfully disagrees with the Examiner's interpretation of the term "module".

Firstly, Appellant admits that the specification does not provide guidance for the term “module”:

- Since Appellant's specification does not explicitly provide a definition of the term "module", it is submitted that its plain meaning should be applied when interpreting the claims for purposes of determining patentability.

Appellant then alleges that a suitable dictionary would define the term well enough to render the subject matter statutory:

- Referring to any suitable dictionary or other similar source, the plain meaning of the term "module" is simply a component which is self-contained to perform a particular task. For instance, a space shuttle may include several modules - a shuttle docking module, a lunar excursion module, a command module, etc. In most cases, each of the space modules includes some type of computing technology that is configured to run software programs/routines for performing one or more desired functions of the space shuttle.

The Examiner posits that given its broadest reasonable interpretation, Appellant's module could reasonably be interpreted as a software module. Appellant's specification provides no guidance one way or another and so the term is read broadly. Appellant also believes the “on-board module” to be similar to "module" just discussed:

- Appellant submits that the space modules are very similar to the "on-board module" recited in claims 1 and 2.

The Examiner respectfully disagrees that the on-board modules claimed are similar to space modules. The Examiner could not find any indication within the specification to support this conclusion. Appellant states that because the modules are capable of “sensing”, “recording”, and “receiv[ing]”, as claimed, the claimed modules:

- clearly includes more than just software.

The Examiner respectfully disagrees. The broadest reasonable interpretation of a module includes software without structural requirements and that software could reasonably be instructions for performing the claimed “sensing”, “recording", and “receiv[ing]”. Applicant also states:

- In the Final Office Action of August 20, 2009, the Examiner further asserts that the term "transceiver" is directed toward nominal data gathering, and thus is not considered to be patentable subject matter. The Examiner cites In re Comiskey, 499 F.3d 1365, 1380 (Fed. Cir. 2007) to support his assertion. However, Appellant points out that the Federal Circuit also stated that claims combining the use of machines with a mental process do include patentable subject matter (In re Comiskey at 1380). Appellant submits that the transceiver (identified by reference identifier 42 in Fig. 1, and which term is used interchangeably with the term "module" in Appellant's specification) receives the recorded data, and automatically transmits the recorded data or the calculated delta velocity to the service center. (See, e.g., page 3, lines 13-19 of Appellant's specification as filed.) Thus, the transceiver is not just means for gathering data, but is combined

with steps of the mental process (i.e., the method of estimating vehicle damage). It is submitted that such is considered to be patentable subject matter.

The Examiner disagrees that transcribing is “combined” with the steps of Appellant’s mental process of estimating vehicle damage. The step that includes transceiving is distinct from the step that includes Appellant’s mental process of estimating vehicle damage. Appellant further argues that the claimed “estimator” represents a computerized process according to the specification; Appellant states:

- The Board's attention is directed to page 4, lines 3-6 of Appellant's specification as filed, which states that the estimator represents "a computerized process that receives the data from the module 40, either in the form of recorded data or computed delta velocity, and utilizes this data along with the vehicle type information to determined an estimated damage value" (emphasis added). Appellant submits that a "computerized process" is the same as a computer or a processor (i.e., the apparatus) that is used to determine an estimated damage value.

The Examiner maintains that Appellant’s claimed estimator could reasonable be considered a person working at a computer. In insurance, an estimator is normally a skilled person who estimates – with or without the aid of a computer. Appellant’s specification gives little guidance as to how the process is computerized or what that means. Appellant just previously argued that estimating vehicle damage was a mental process. Appellant’s current argument that the estimation is computerized conflicts with the previous argument that estimation was a mental process. The Examiner disagrees that a computerized process “is the same as a computer or a processor". Just as an

example, a computerized process could refer to a process determined by a computer or entered into a computer and not the computer itself which need not necessarily be present to understand the (computerized) process. Finally, Appellant argues:

- Additionally, in the Final Office action of August 20, 2009, the Examiner asserts that "an insurance service management system" is not a particular machine. Appellant again respectfully disagrees with the Examiner, and submits that the insurance service management system encompasses a processor (identified by reference identifier 35 in Fig. 1) for making insurance related decisions/actions (see page 4, lines 25-30 of Appellant's specification as filed).

The Examiner maintains that “an insurance service management system” is not a particular machine and does not fall distinctly into a statutory class. Appellant's system may be a step-by-step method. If a particular machine was included in Appellant's system and was not directed toward nominal data gathering the claim might be statutory. The "insurance service management system", as it is, is not considered a particular machine.

25. In the remarks, Appellant argues in substance that (2) the 35 U.S.C. 112, first paragraph, rejection concerning enablement of the claimed invention as outlined through the Wand Factors is in error for the following reasons:

Factor A: Breath of the claims

- Yet further, the vehicle damage value is estimated, by the estimator, using the delta velocity and vehicle identification information (see claim 2). It is therefore submitted that the Examiner is incorrect in stating that the vehicle damage is estimated using only delta velocity.

Claim 1 does not teach that vehicle identification information is used in the calculation of a vehicle damage estimate, however, it is quite obvious that under any scenario the identity of the vehicle is known – the fact that we're talking about vehicles is at least enough of an identification to distinguish the vehicle from a house or a person or any of the other things that can be damaged. However, in an equation or other mathematical logic that would yield a "vehicle damage value", Appellant teaches that they only things acquired at the time of the incident that was not known before the incident is the vehicle's delta-velocity (or change in velocity - this is a measure of acceleration or deceleration). The Examiner maintains that Appellant's claims are overly broad. In claim 1, Appellant claims simply "using the incident data to automatically estimate the vehicle damage", in claim 2, "using the incident delta velocity with vehicle identification information to automatically estimate a vehicle damage value", and in claim 5, "using the incident data to automatically estimate a vehicle damage value". This is a black-box calculation: very little information goes in and an answer comes out, but nothing is known about how that answer is arrived at.

Factor B: Nature of the invention

- In the Final Office Action dated August 20, 2009, the Examiner argues that estimating vehicle damage is technically complex, and submits that the prior art (such as Kidd, et al. (U.S. Patent Publication No. 2002/0013685), referred to herein as "Kidd) has established that calculating delta velocity from a plethora of vehicle damage information is complex, involved, and can be done in many different ways. Although the Examiner recognizes that Appellant's invention is drawn to a method for estimating vehicle damage; and not to calculating delta

> velocity, the Examiner asserts that such estimation would be complex given the fact that the prior art shows that determining delta velocity is complex.
>
> …
>
> In light of the fact that Appellant's specification as filed states that delta velocity may be accomplished using techniques known by one skilled in the art (see page 1, lines 7-9 and page 3, lines 9-12), it is submitted that the basic equation for delta velocity (i.e., v1 = v2 + at) may reasonably be applied. Additionally, the background section of Appellant's specification states that delta velocity measurements (e.g., determined via the basic equation provided above) have been used, e.g., by supplemental inflatable restraint (SIR) systems for purposes of alerting response persons to potential injury. Appellant submits that such systems have been used for several years. Accordingly, it is submitted that details of the basic calculation for delta velocity do not have to be disclosed in the specification, nor recited in the claims to satisfy the enablement requirement.

The Examiner fails to see how this argument refutes the Examiner's allegation that estimating vehicle damage using delta velocity is technically complex. Appellant points out that the delta velocity equation is a "simple" equation that is not disclosed in Appellant's specification, but the element the Examiner is concerned with is the calculation of vehicle damage. Appellant has stated repeatedly that the delta velocity calculation is simple but is silent on the vehicle damage calculation which simply employs a delta velocity value (e.g., x m/s^2), not the delta velocity equation. The plethora of prior art cited shows that determining delta velocity from vehicle damage information is technically complex, i.e., going from a complex set of information about

vehicle damage to the simple value of delta velocity is difficult enough: complexity → simplicity. What the Examiner is concerned with is how Appellant went from simplicity to complexity: simplicity → complexity. If it is even possible, this should be more difficult to explain, and currently, Appellant has not described how vehicle damage estimates are arrived at well enough to enable a person of ordinary skill in the art to understand the claimed invention without undue experimentation.

Factor C: State of the prior art

- In the Final Office Action dated August 20, 2009, the Examiner cites many references, and asserts that these references reveal that estimating vehicle damage from delta velocity and vehicle identification was not well known. Appellant disagrees with the Examiner, and submits that Appellant's application discloses that the estimated damage value may be determined using a lookup table or database (see page 4, lines 7-10). Appellant further submits that such lookup tables or databases have been used for years and may be applied to a number of different applications (e.g., for determining geographic coordinates of a desired area, for determines sales tax in a particular state for a purchased item or good, etc.).

  The Examiner argues, in the Final Office Action dated August 20, 2009, that Appellant does not disclose how the lookup table is constructed (i.e., where the estimations come from, how the estimations are put into the table, how the table is formatted, how the vehicle damage is estimated using delta velocity, etc.). In response thereto, Appellant submits that the Examiner is making this simple lookup table far more complicated than it needs to be. Briefly, the lookup table is a correlation between the delta velocity and vehicle identification information

> (such as the make and model of the vehicle) with a number representing damage to the vehicle (referred to as a damage value). For merely illustrative purposes, the number or damage value may be similar to the rating disclosed in the Kidd reference discussed above. As an example, if a vehicle such as a Suburban hit a wall going 5 mph, the lookup table may be used to obtain a damage value of, for example, 1. Such damage value would indicate that a small amount of vehicle damage would be evident. If, on the other hand, a vehicle such as a Cavalier hit a wall going 50 mph, the lookup table may reveal a damage value of 10, indicating that a lot of vehicle damage would be evident. As stated in Appellant's specification as filed, such lookup tables or databases may be obtained from the insurance industry or can be constructed from impact tests, etc. (see page 4, lines 14-17).

Firstly, the look-up table Appellant argues is not claimed. Secondly, how look up tables work and that they have been previously used, and therefore would be obvious to use for Applicant's purpose, is not the Examiner's concern here. Applicant states that a look up table could be constructed for Applicant's purpose, but how? Where do the estimations come from, how were they put into the table, how is the table formatted or constructed, how did Applicant estimate vehicle damage using delta velocity, what calculations, variable, metrics, and equations are involved, and what measurement units were used? The prior art shows no such table being used to estimate vehicle damage by way of a delta velocity look up table. Thirdly, in Appellant's above example, which is not a part of the specification, no delta velocity (which, using the parameters of the example set by Appellant, looks like it would be measured in miles/hour^2) measurement

is employed, only velocity (which is measure in mph, or miles per hour, or miles/hour, in Appellant's example “5 mph”). Appellant teaches a damage index of 1, but again, how was this index determined? Why is the damage determined to be a “small amount”? What table is Appellant referencing in the example? How was the table constructed? Appellant does give some guidance here: “such lookup tables or databases may be obtained from the insurance industry or can be constructed from impact tests, etc.” However, the Examiner is not aware of a table where inputting "Suburban" and “5 mph” (which is not a delta velocity measurement) would yield a reliable vehicle damage estimate, which is apparently “1” by way of Appellant’s example. The impact tests Appellant references use a large number of variables and sensors of all kinds to reliably *measure* vehicle damage – if they could reliably estimate the vehicle damage the tests would not have to be performed at all. More importantly, Appellant has provided no evidence of such tables from the insurance industry or from vehicle impact tests to support these allegations.

Also note, with reference to Appellant’s example including an index value “1” associated with a “small” amount of vehicle damage, this would seem to render claims 3, 4, 6 and 7 inoperable as they appear to require a monetary estimation of vehicle damage.

Factor D: Level of ordinary skill

- In the Final Office Action dated August 20, 2009, the Examiner argues that one of ordinary skill in the art must be mathematically skilled and, even if mathematically skilled, would still not know how to estimate vehicle damage from delta velocity and vehicle identification information. Appellant respectfully

disagrees with the Examiner, and submits that basic mathematical skills (e.g., an elementary school student) would be required to calculate delta velocity using the equation provided above. Appellant further submits that mathematical skills are generally not required to use a lookup table, and thus are not required to estimate a vehicle damage value.

…

Despite the foregoing statement, the point that Appellant is trying to make is that a delta velocity estimation may be accomplished using basic algebra that one skilled in the art would generally know and be able to apply without a specific teaching of how to do so from Appellant's specification.

As previously explained to Appellant, the calculation of delta velocity is not the issue (especially beside the point is weather a normal elementary school student can understand the equations presented in section X, Evidence Appendix, of this Appeal Brief) – Applicant teaches that delta velocity is known and is used in an estimation of vehicle damage. Instead, how is vehicle damage estimated using delta velocity?

Factor E: Level of Predictability in the art

- The Examiner argues that Appellant's invention as defined in claim 2 attempts to automate a manual process. The Examiner reasons that estimating vehicle damage is a subjective manual process typically done by adjustors in the insurance business or specialists in the automotive business and, thus, the results would be unpredictable as they would require imprecise human judgments.

  Appellant submits, however, that the method defined in claim 2 (as well as defined in the other pending claims of the instant application) actually replaces a

> known manual method with a new, apparatus-based method. An example of such known manual method would include the method disclosed by the Kidd reference, where a person would manually input the damage (after looking at the vehicle first-handedly) into a computer system. In sharp contrast, the method defined by Appellant's pending claims involves automatically sending delta velocity from the vehicle, and then estimating the damage. The estimated damage is ultimately used in an insurance decision.
>
> Further, Appellant's method defined in claim 2 uses a machine estimation process to determine the vehicle damage value. As one skilled in the art would know, lookup tables are often used in computer programs to determine desired outputs. In claim 2, the vehicle damage value may be automatically estimated (via, e.g., a computer operating a computer program) by looking up the damage value in the lookup table based on the delta velocity and the vehicle identification information.

Firstly, the Kidd reference is irrelevant here. Kidd is concerned with calculating delta velocity based on estimated vehicle damage and is the complete inverse of Appellant's invention. Secondly, again, the look up tables are not claimed. Thirdly, estimating vehicle damage is a subjective manual process typically done by adjustors in the insurance business or specialists in the automotive business. The prior results were unpredictable as they require imprecise human judgments. This factor was used to show that people (e.g., adjustors in the insurance business or specialists in the automotive business) with specialized skills previously performed these functions. Previously, estimating vehicle damage was an art performed by experienced human

beings and the result of said evaluation by a human being cannot be assured and requires a particular skill. If Applicant is to distill estimating vehicle damage down to a science, Applicant must disclose how vehicle damage estimates are determined from delta velocity.

Factor F: Amount of direction provided by the inventor

- The Examiner argues that Appellant provides no direction (e.g., calculations, variables, inputs, and equations involved) in the specification for how the vehicle damage value is estimated. Appellant respectfully disagrees with the Examiner. Appellant's specification as filed provides a relatively straightforward algorithm that a skilled artisan can readily apply. To reiterate from above, the vehicle damage value is obtained by looking up the delta velocity (e.g., calculated by the delta velocity equation provided above) and the vehicle identification (e.g., make and model of the vehicle) in the lookup table (see page 4, lines 3-13 of Appellant's specification as filed). While other variations of the method may be applied that use far more complex algorithms, it is submitted that Appellant's method, in its basic form, need not be as complex. Further, the basic algorithm, in addition to the fact that the results from using such algorithm, may be available to the insurance industry and/or to estimate vehicle repairs (see page 4, lines 8-10 of Appellant's specification as filed). It is further submitted that the estimated damage does not have to be precise, so long as the estimate is useful to an insurance company, for example, to sort out minor collisions (e.g., fender benders) from mid-level collisions, and those from major collisions (e.g., where the vehicle is considered to be totaled). As explained on page 5 of Appellant's specification as filed, such is useful for insurance companies so that a

comparison may be made between the estimated damage and the claim amount (in dollars).

Appellant provides no direction. The specification refers to an “estimator” for receiving incident delta velocity and "utilizes this data along with the vehicle type information to determine an estimated damage value" by looking up the inputs in a database, but in no way is it made clear how this is done; what calculations, variables, inputs, and equations are involved; or even exactly what the variables are, except for that of delta velocity. A mere statement that it is done is insufficient to show possession. Appellant states that insurance companies use these tables to estimate vehicle damage (which makes the Examiner question the novelty of the invention but this will be discussed below) but provides no evidence that such a look up table exists. Using delta velocity to estimate vehicle damage is a black-box calculation: very little information goes in and an answer comes out, but nothing is known about how that answer is arrived at. The Examiner posits that no such table exists. If Appellant is the first to be able to reliably produce a table that receives the claimed input and outputs a reliable result, such is not disclosed in Appellant's specification in such a way as to reasonably convey to one of ordinary skill in the art at the time the invention was made that Appellant had enabled the invention.

Factor G: Existence of working examples

- The Examiner asserts that there are no working examples set forth in Appellant's specification as filed. Appellant respectfully disagrees with the Examiner, and directs the Examiner's (and the Board's) attention to page 4, lines 15- 17 of Appellant's specification as filed, which states that "a small delta velocity will

correspond to limited vehicle damage and progressively larger delta velocities correspond to progressively more vehicle damage." Appellant submits that such disclosure is a working example. Appellant further submits that the recognition in the field that delta velocity corresponds to vehicle damage and injury severity also renders the foregoing disclosure a working example (see background section of Appellant's specification as filed).

The Examiner disagrees. The "example" provided by Appellant is insufficient for the purposes of showing enablement. The "example", in fact, discloses the result - a vehicle damage estimation of sorts. The result is a correlation that is not necessarily causal and does not elucidate how the damage to a particular vehicle is estimated. The Examiner posits that the example could even be incorrect – from personal experience the Examiner can confirm that there are instances when a “small” (small is a term of degree not defined by Appellant) delta velocity ends up corresponding to a large amount of vehicle damage and *vice versa*.

Factor H: Quantity of experimentation needed to make or use the invention based on content of the disclosure

- The Examiner argues that, based on the content of the disclosure, there would be an undue amount of experimentation to estimate the vehicle damage value. Again, Appellant submits that the Examiner is viewing the method defined in Appellant's pending claims as more complex than it needs to be. From Appellant's specification, one is able to utilize delta velocity and vehicle identification information to determine a damage value. The damage value may be easily assigned by one skilled in the art. For instance, one may assign a

> damage value of 1 in cases where delta velocity is small. In such instances, an insurance company will probably deduce that the collision was nothing more than a fender bender, and a collision investigator probably would not be needed. In another instance, one may assign a damage value of 10 in cases where delta velocity is large. In these instances, an insurance company will probably deduce that the collision caused significant damage to the vehicle, and a collision investigator will probably be dispatched. Thus, contrary to the Examiner's assertion stated above, Appellant submits that the estimating of the vehicle damage value (as recited at least in claim 2) is relatively straight forward, and does not require an undue amount of experimentation.

Based on the content of the disclosure, an undue amount of experimentation would be required to, in any way, estimate vehicle damage; therefore, and undue amount of experimentation would be need to make or use Appellant's invention. Appellant states that the damage value may be assigned a value of 1. This is not in the specification and appears to be an index value, the origins of which are unknown. Appellant states that this is a "small" amount of damage, which is a term of degree undefined by Appellant, and then states that an insurance company will "probably" deduce that the collision was nothing more than a fender bender. This is not a reliable, repeatable, result. Furthermore, there is nothing about fender benders and how an insurance company would treat such information in the specification.

26. In the remarks, Appellant argues in substance that (3) the 35 U.S.C. 112, second paragraph, rejection concerning omitted steps in the estimation of vehicle damage:

- Appellant herein reiterates all of his arguments presented above in conjunction with the 35 U.S.C. 5 1 12, first paragraph, rejection of claims 1, 2, and 5, and submits that the Examiner is making the method of estimating vehicle damage value far too complicated. The method is actually quite simple (as explained above), whereby the delta velocity and the vehicle identification are used as inputs in a lookup table, from which the vehicle damage value may be retrieved. As stated in Appellant's specification as filed, a small delta velocity corresponds to limited vehicle damage, and progressively larger delta velocities correspond to progressively more vehicle damage (see page 4, lines 15- 17). Accordingly, it is submitted that the Examiner's instant rejection is erroneously based, and withdrawal of the same is respectfully requested.

The Examiner is not concerned with the simplicity or complexity of the estimation of vehicle damage. The Examiner is concerned with how the estimation is arrived at, which does not appear to be disclosed. The estimation may be as simple as Appellant believes it is, but there is no way to know this if it is not disclosed. Appellant recites a black-box calculation: very little information goes in and an answer comes out, but nothing is known about how that answer is arrived at. The omitted steps are: Applicant claims using incident data to automatically estimate vehicle damage (in claim 2, incident data is delta velocity), but the steps detailing how one uses said incident data to determine vehicle damage are missing. Applicant’s specification teaches only that an “estimator” makes estimate by looking up the input in a database, but no such database is known to exist, and the steps involved in looking up, calculating, and determining an estimated values based on incident data are missing.

27. In the remarks, Appellant argues in substance that (4) the 35 U.S.C. 103(a) rejections applied to rejected claims 1-7 are improper based upon the following points:

- Appellant submits that Lockwood does not disclose that the estimating of the vehicle damage is accomplished via an estimator at a service center. In the Final Office Action, the Examiner argues that an operation control center is substantially the same as Appellant's service center, and that vehicle sensor data is received in a vehicle distress event and a response plan is generated. Appellant respectfully submits that the Examiner has misread the Lockwood reference. The paragraph set forth at column 3, lines 19-39 of Lockwood provides that detection may occur as a result of a customer-initiated communication indicating the occurrence of a distress event, and such communication may be received by, e.g., a human operator at the control center. Appellant submits that Lockwood does not disclose that the control center actually generates a response plan upon receiving the distress communication from the customer. At most, Lockwood discloses that the control center may have access to a back end customer service environment (column 5, lines 48-62). In an example, the environment (& the control center) includes application servers that may be responsible for generating and executing response plans (column 6, lines 56-62).

The Examiner respectfully disagrees with Appellant's arguments. Appellant questions the Lockwood reference specifically, an analysis of which follows:

Column 3, lines 29-33, state: "The communication may be received by either a human operator at a control center, an automated voice response (AVR) system or some combined system. The communication maybe be in the form of either an audio

transmission or a data transmission." Hence, there is a control center that receives data transmissions.

Column 3 line 60 through column 4 line 61 detail the types of sensors and their purpose. The sensors include ""G" Force" which can be used for "indicating a collision impact may have occurred". Then there's the "Rapid acceleration or deceleration" that has the purpose to "Record when these events occur and their severity". There are other sensors listed that may be applicable but these are seen as the most pertinent to the present case.

Column 5, lines 13-20, teach a vehicle with sensors and the ability to communicate: "The communications link to a central control station is accomplished through the cellular telephone, radio, satellite or other wireless communication system". Column 5, lines 34-35, teach "The vehicle is linked to an operation control center or AVR 360 by a communications link".

Column 6, lines 15-21, teach "a data store may be utilized to store data needed by the environment such as customer and vehicle related data that is utilized in the response plan generation and execution. In other embodiments, this data, if required, may be hosted by a variety of service providers such as insurance providers". Hence, data utilized in a response plan (e.g., data from the vehicle sensors) can be hosted by insurance providers. Furthermore, column 6, lines 30-32, teaches that "service providers may also be connected to the environment via a suitable communications link such as the Internet", the providers again including the insurance provider.

Hence, the Examiner believes it is evident that Lockwood teaches collecting information obtained from vehicle sensors at services providers (including insurance providers) via a communications link for data transmission such as the Internet. Now, an exploration of what the environment that generates and executes the response plans is:

Importantly, column 6, lines 41-61, teaches “The environment may include one or more servers supporting Web functionality and interaction by members of the user community, service providers and workstations in an operations center utilizing the environment…The application servers may be responsible for encapsulating the functionality to generate and execute the response plans as described in more detail below”. Hence, it is the servers at the operations center which generate and execute the response plans. This is sufficient to meet the claims. Note that additional support can be found throughout the Lockwood reference.

As per Appellant’s concern of the mention of design choice in the response to arguments section of the Final Office Action dated August 20, 2009, it is irrelevant as the prior art is sufficient in meeting the claims.

- Yet further, the Examiner argues that Lockwood discloses many damage values based on the list of sensors provided at column 3, line 56 through column 4, line 61. The Examiner submits that such sensors produce values that define a vehicle incident and trigger an insurance process. Appellant respectfully disagrees with the Examiner, and submits that the Examiner is confusing the term "incident data" with the term "estimated vehicle damage". Appellant directs the Examiner's (and the Board's) attention to claim 1, which recites, "sensing a vehicle incident via an on-board module" and "automatically sending vehicle incident data.. . to a

> service center." In other words, the vehicle incident data is obtained from the sensors, and such data is then used to estimate vehicle damage (see also page 4, lines 3-6 of Appellant's application as filed). It is submitted that the list of sensors provided at columns 3-4 of Lockwood are used to obtain data (such as incident data). It is further submitted that Lockwood does not disclose that such data is thereafter used to estimate vehicle damage (i.e., a range of actual damage values consistent with the data recorded by the sensors), which may thereafter be utilized in a vehicle insurance decision.

The Examiner respectfully disagrees with Appellant's arguments. Appellant questions the Lockwood reference specifically, an analysis of which follows:

Column 8, lines 11-15, teaches "The generated response plan will depend upon the distress event detected. Distress events may fall into several broad categories including, but not limited too, a vehicular accident…"

Column 8, lines 20-34, teaches "the generated plan may also involve automated review of information associated with the customer and/or the vehicle. For instance, vehicle information such as warranty coverage, comprehensive and collision insurance coverage…may further impact response plan generation. Once a response plan is generated, or a partial plan in those embodiment utilizing iterative generation and execution, the plan, or portion thereof, is executed in at least a semi-automated fashion. In some embodiments, the response plan may be executed in a full automated fashion. The automated actions may be carried out through a variety of computer systems…" Hence, sensed vehicle incident information is set to a service center which utilizes that information in formulating and executing a response plan. The Example provided by

Lockwood further teaches the abilities of the Lockwood invention and will be described here:

Column 8, line 64 through column 9 line 65, teach that "Sensors detect that a vehicle has been involved in a collision". These are the sensors previously mentioned and include sensors for G-force and for rapid acceleration and deceleration and their associated severity. This is known because Lockwood teaches "Notification Triggers: vehicle sensors (typical sensors that could be used to generate this type of trigger are described above)". Actions include "search records to identify types of insurance and/or warranty coverage provided…Notify the 24/365 claims call center…Dispatch an adjuster to the scene". Lockwood teaches different scenarios that recognize the difference between a loss and a total loss: "Same scenario except the vehicle is a total loss. Instead of making an appointment at the local repair shop a similar vehicle is located (in accordance with the customer profile) and financed and delivered to the customer". Hence, we know the Lockwood invention can make an assessment as to the estimated value of the damage done to a vehicle.

As per Appellant's concern that the references were or were not attacked individually as alleged they were in the Final Office Action dated August 20, 2009, the Examiner respectfully disagrees with Appellant. The references were attacked individually.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/R. S./

Examiner, Art Unit 3626

7 April 2010

Conferees:

/Robert Morgan/

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